

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOHN H. CARTER and DEPARTMENT OF THE NAVY,
NAVAL BASE, Philadelphia, PA

*Docket No. 03-434; Submitted on the Record;
Issued May 12, 2003*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's August 24, 2002 request for a hearing before an Office hearing representative.

In a decision dated February 16, 2001, the Office terminated appellant's compensation on the grounds that the weight of the medical evidence established that residuals of the April 11, 1988 employment injury had ceased. He disagreed with this decision and on February 23, 2001 requested a hearing before an Office hearing representative. Appellant appeared and testified at the hearing, which was held on June 26, 2001. In a decision dated September 20, 2001, the Office hearing representative affirmed the termination of appellant's compensation.

On August 24, 2002 appellant asked the Office "to reconsider my request for a new hearing."

In a decision dated October 7, 2002, the Office denied appellant's request for a new hearing. The Office found that appellant was not entitled to a hearing as a matter of right because he already had a hearing in his case. The Office exercised its discretion and denied a second hearing on the grounds that "the issue in this case can equally well be addressed by requesting reconsideration from the district office and submitting evidence not previously considered which establishes that you continue to suffer residuals from your April 11, 1988 injury."

Because appellant mailed his November 29, 2002 appeal to the Board more than one year after the Office's February 16 and September 20, 2001 decisions, the Board has no jurisdiction to review those decisions.¹ The only decision that the Board may review is the Office's October 7, 2002 decision denying his August 24, 2002 request for a hearing. The only issue before the Board, therefore, is whether the Office properly denied that request.

¹ 20 C.F.R. §§ 501.3(d)(2).

The Board finds that the Office properly denied appellant's August 24, 2002 request for a hearing before an Office hearing representative.

Any claimant not satisfied with a final decision of the Office shall be afforded an opportunity for an oral hearing before an Office representative. A claimant is not entitled to an oral hearing, however, if he has already received a hearing on the same issue or set of issues.²

In this case, appellant disagreed with the Office's February 16, 2001 decision, terminating his compensation on the grounds that his injury-related residuals had ceased. He exercised his right to a hearing, which was held on June 26, 2001. In a decision dated September 20, 2001, the Office hearing representative affirmed the termination of his compensation. Having already exercised his right to a hearing on the issue of termination, appellant is not entitled to a second hearing on the same issue as a matter of right.

The Board has held, however, that the Office, in its broad discretionary authority to administer the Federal Employees' Compensation Act, has the power to hold hearings in certain circumstances where no legal provision is made for such hearings and has held that the Office must exercise its discretion in such cases.³ The Office shall determine whether a discretionary hearing should be granted and, if not, shall so advise the claimant with reasons.⁴

Although appellant was not entitled to a second hearing on the issue of termination as a matter of right, the Office considered his request and exercised its discretion. The Office denied a second hearing on the issue of termination because appellant could equally well address the issue by requesting reconsideration from the district office and submitting evidence establishing that he continues to suffer residuals of the April 11, 1988 employment injury. Indeed, he need not have a second hearing before an Office hearing representative to address the issue of termination effectively. As appellant may address this issue equally well through the reconsideration process, the Board finds that the Office properly exercised its discretion in denying appellant's August 24, 2002 request for a hearing and so advised appellant with reasons.

² *Charles D. Watson*, 35 ECAB 1068 (1984) (if a claimant has received a hearing on an issue or set of issues and the hearing representative affirms the Office's decision, the claimant is not entitled to another hearing on that issue or set of issues even if he proffers new evidence; he may receive a second hearing only if the Office, in its discretion, grants him a second hearing).

³ *Shirley A. Jackson*, 39 ECAB 540 (1988) (hearing request made after request for reconsideration); *Johnny S. Henderson*, 34 ECAB 216 (1982) (request for a second hearing); *Rudolph Bermann*, 26 ECAB 354 (1975) (injury occurring prior to effective date of the statutory amendments providing right to hearing).

⁴ *Rudolph Bermann*, 26 ECAB 354 (1975).

The October 7, 2002 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC
May 12, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member